

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

In re:

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

THE COMMONWEALTH OF PUERTO RICO,

Debtor.¹

PROMESA

Title III

No. 17 BK 3283-LTS
(Jointly Administered)

**MILLIMAN’S RESPONSE TO
AMBAC’S STATUS REPORT REGARDING AMBAC’S MOTION TO COMPEL**

Milliman, Inc. (“Milliman”) responds to the status report filed by Ambac Assurance Corporation (“Ambac”) on June 8, 2021 (ECF No. 16904) in advance of the date set by the Court to do so of June 11, 2021 (ECF No. 16867).

RESPONSE

This Court’s June 2, 2021 Order required Ambac to submit a status report “detailing whether any *issues raised in the Motion to Compel* have been resolved and identifying the issues that remain open for resolution.” (emphasis added). Ambac’s “status report,” however, goes well beyond the “issues raised in the Motion to Compel,” and asks this Court to rule on new issues never before presented to the Court. Indeed, in order to understand the issues that “have

¹ The Debtors in these Title III Cases, along with each Debtor’s respective Title III case number and the last four (4) digits of each Debtor’s federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (“Commonwealth”) (Bankruptcy Case No. 17-BK-3283- LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation (“COFINA”) (Bankruptcy Case No. 17-BK-3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority (“HTA”) (Bankruptcy Case No. 17-BK-3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico (“ERS”) (Bankruptcy Case No. 17-BK-3566-LTS) (Last Four Digits of Federal Tax ID: 9686); (v) Puerto Rico Electric Power Authority (“PREPA”) (Bankruptcy Case No. 17-BK-4780-LTS) (Last Four Digits of Federal Tax ID: 3747); and (vi) Puerto Rico Public Buildings Authority (“PBA”) (Bankruptcy Case No. 19-BK-5523- LTS) (Last Four Digits of Federal Tax ID: 3801) (Title III case numbers are listed as Bankruptcy Case numbers due to software limitations).

been resolved and . . . the issues that remain open for resolution,” this Court could stop reading Ambac’s status report at paragraph six, which confirms that Milliman made an additional production of e-mails (as promised) on May 24, 2021. None of the other issues in Ambac’s Motion to Compel have been resolved.

Beyond paragraph six of its status report, Ambac gives the Court four pages of new issues not raised in the Motion to Compel and asks the Court to enter relief while the parties are in the midst of meeting and conferring on those very issues.² This section of Ambac’s status report begins with a heading titled “The May 26 Meet and Confer,” but that conferral was simply not about the Motion to Compel.

Ambac’s Motion to Compel asked the Court to resolve six (6) specific requests, not the broader requests in Ambac’s subpoena. *See, e.g.*, ECF No. 16487 ¶ 13, ECF No. 16487-1 at 3. Milliman’s response to the Motion to Compel briefed the six issues that the parties had met and conferred about to date. *See, e.g.*, ECF No. 16734 at 2, 8. Ambac’s reply addressed the “six categories of prioritized document requests.” ECF No. 16803 ¶ 8.

While Milliman and Ambac clearly disagree about how the Court should resolve the six specific disputes briefed in these filings, those filings did not raise the new issues that Ambac now seeks to retroactively inject into the Motion to Compel. For example, Ambac’s status report raises new issues of internal e-mails and the 2018 valuation report, which has not been finalized or published. *See* ECF No. 16904 ¶¶ 14-16, 19. Ambac’s Motion to Compel and, indeed, the parties are presently discussing whether, how, and to what extent Milliman will produce this

² Ambac’s status report represents the opposite of a good faith meet and conferral on the new issues. That conferral began about a week-and-a-half ago (given the Memorial Day holiday) and, as Ambac’s filing indicates, involves large volumes of data. ECF No. 16904-1 at 2. Milliman has attempted to be as responsive as it can to Ambac, including on the issue of internal e-mails, which Ambac’s reply tells the Court Milliman “finally” agreed to meet and confer on a mere two business days after Ambac asked for such conferral. ECF No. 16803 at 12 n.7. That correspondence is attached hereto as Exhibit 1.

information. By way of example, as to the internal e-mails, Ambac has not even approved (or disapproved) the search terms that Milliman proposed, but Ambac asks the Court to order production of those e-mails (of unknown volume) “within two weeks.” ECF No. 16904 ¶ 19.

And although Milliman expects the Court would prefer not to spend its resources reviewing a response to new issues that are not yet properly before the Court, Milliman would be remiss not to point out that Ambac materially misstates Milliman’s discussions on these new issues. For instance, Milliman did not say the “Board would make the determination” when the 2018 valuation report would be published, as Ambac indicates in its status report. *Id.* ¶ 10. If the Court is interested in a response on each of the new issues raised in Ambac’s status report, Milliman can and will promptly provide such response upon Court request.

Otherwise, Milliman would respectfully reiterate its Rule 45(d)(1) request for an order conditioning further document discovery from Ambac and note that Ambac’s failure to adhere to the Court’s June 2 Order in its “status report” is further evidence of the need for such an order.

Dated: June 9, 2021

Respectfully submitted,

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